U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 13 2003

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

APPLICATION: Petitioner for Special Immigrant Battered Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

IN BEHALF OF APPLICANT: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iv), as the battered child of a naturalized United States citizen.

The director determined that the petitioner failed to establish that she is the child of a citizen or lawful permanent resident of the United States. The director, therefore, denied the petition.

On appeal, counsel for the petitioner provides the Service with a brief. In the brief, counsel asserts that termination of a marriage may not be the sole basis for revocation.

In review, counsel's argument is not persuasive. Revocation is not an issue in this matter.

8 C.F.R. § 204.2(e)(1) states, in pertinent part, that:

> (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:
>
> > (A) Is the child of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident parent;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident while residing with that parent;
> >
> > (F) Is a person of good moral character; and,
> >
> > (G) Is a person whose deportation would result in extreme hardship to himself or herself.

The petitioner was born on May 4, 1984 in Mexico. The petitioner's mother married a United States citizen in the United States on July 26, 1997. The petitioner's mother and stepfather divorced on November 14, 1999, more than two years prior to the

filing of the instant petition.

The director denied the petition, finding that because the petitioner's mother and stepfather were divorced more than two years prior to the filing of the petition, no petitionable relationship existed between the petitioner and her stepfather at the time of filing the petition.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(c) amends section 204(a)(1)(B)(ii) of the Act so that an alien self-petitioner claiming to qualify as the battered spouse or child of a lawful permanent resident is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the permanent resident spouse. Id. section 1503(c), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. *Johnson v. United States*, 529 U.S. 694, 702 (2000); *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991).

The record reflects that the petitioner's parents divorced on November 14, 1999, and the petitioner filed the instant petition on March 22, 2002, more than two years after the divorce was final. Accordingly, the appeal must be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.